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**NOV 05 2004**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Joseph R. Bechtel et al.	:	
Application No. 10/644,460	:	
Date Deposited: August 21, 2003	:	DECISION ON
Attorney Docket No. 58889US002	:	PETITION UNDER
1004-082US01	:	37 C.F.R. §1.10(D)
Title: CENTRALIZED MANAGEMENT	:	
OF PACKAGING DATA HAVING	:	
MODULAR REMOTE DEVICE CONTROL	:	
ARCHITECTURE	:	

BACKGROUND

This is a decision on the Petition under 37 C.F.R. §1.10(d), filed September 27, 2004, requesting that application number 10/644,460 be accorded a filing date of August 20, 2003.

The application was deposited on December 24, 2003.

Petitioner has alleged that the application was deposited on August 20, 2003, and the incorrect date was written on the Express Mail label. With his petition, Petitioner has included a copy of a receipt and the Express Mail label bearing the number EV326584758US<sup>1</sup>.

As set forth above, the Express Mail label itself bears the date "8/30/03." A check of the Office's USPS Express Mail Finder Database computer program was inconclusive. A check of the United States

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<sup>1</sup> It is noted that this same Express Mail number appears on the Patent Application Transmittal Letter which was included on filing.

Postal Service's website  
(<http://www.usps.com/shipping/trackandconfirm.htm>) was equally inconclusive, as the relevant data is stored offline.

THE RELEVANT PORTION OF THE C.F.R.

37 C.F.R. § 1.10: Filing of correspondence by "Express Mail."

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As stated above, Petitioner has met the second requirement above.

Regarding the first requirement, the application was filed in late August of 2003. The filing receipt which bears a filing date of August 21, 2003 was mailed on November 17, 2003. More than 7 months later, Petitioner filed a request for a corrected filing receipt. Three months later, Petitioner submitted the instant petition. As such, this petition was filed more than 10 months after the mailing of the filing receipt, and the relevant regulation requires any petition under this section to be filed promptly. As such, Petitioner cannot meet this requirement. Petitioner may wish to consider having 37 C.F.R. §1.10(d)(1) waived via the filing of a petition under 37 C.F.R. §1.183.

Regarding the third requirement above, Petitioner has neither submitted a statement from a postal employee attesting that the incorrect date was placed on the mailing label, nor has he submitted documentary evidence which would substantiate his claim, such as a page from a log book, that came into being within one day of the correspondence in question.

CONCLUSION

Accordingly, the petition is **DISMISSED**.

Any renewed petition may be submitted by mail<sup>2</sup>, hand-delivery<sup>3</sup>, or facsimile<sup>4</sup>.

Extensions of time under 37 CFR 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)". This is not a final agency action within the meaning of 5 U.S.C 704.

The reply should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner. The Petitioner may wish to consider telephoning the undersigned at the number provided below to confirm that the documents were delivered to the undersigned. Please note that the delivery process within the PTO can take as much as three weeks.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence unless a Change of Correspondence Address Form (PTO/SB/122) is submitted for the above-identified application. A blank Change of Correspondence Address Form (PTO/SB/122) may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

**The application file will be retained in the Office of Petitions for two (2) months.**

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<sup>2</sup> Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

<sup>3</sup> Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.

<sup>4</sup> (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.



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